

# Guardianship or Conservatorship

*This page is not an exhaustive review of Probate Law. See your attorney for further details.*

## ***How do I know if I need to establish a guardianship or conservatorship?***

If you know someone who, because of a disability, can no longer manage their money or make decisions about their personal or medical care, that person may need a court-appointed Guardian or Conservator. In the case of a minor, a Conservator must be appointed in certain cases when the minor is entitled to receive a sum of money from an insurance settlement, inheritance, etc.

## ***What is a guardianship or conservatorship?***

In South Carolina a Guardian handles personal and custodial matters for an incapacitated adult. The incapacity may be due to mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs or alcohol, or other causes, except minority. A Guardian must decide where the person will live and make provisions for his/her care, comfort and maintenance, including mental and health care decisions.

A Conservatorship manages financial affairs or property for an incapacitated adult or for a minor. A bond insures that the conservator carries out his duties faithfully and appropriately. The bond is based on the total value of the protected person's property (excluding real estate), plus one year's estimated income. The Conservator must manage and protect the property, and report periodically to the court about the assets, receipts and disbursements of the estate. No expenditures can occur without written Court order. If you are appointed Conservator by the Court, it will be your responsibility to dutifully handle the financial situation of the protected person as stipulated by the Court.

## ***Where do I start and how much does it cost?***

### **Contact an attorney who practices in the Probate Court.**

Lawyer's fees can vary depending on the circumstances and complexity of the case. A lawyer must also be appointed to represent the allegedly incapacitated adult.

## ***What is the general process?***

### **Guardianship**

A Guardian is appointed after a hearing where testimony from family, a physician and licensed social worker indicate that the person is in need of a Guardian to assist in his/her personal care.

### **Conservatorship - Adult and Minor**

A Conservator is appointed after a hearing where various professionals indicate the medical and social status of the allegedly incapacitated individual requires a Conservator.

## ***How do I handle the money?***

Filing fees are set by law and must be paid to the Court. If a Guardian and/or Conservator is appointed, the fees are generally paid from the estate of the protected person. Attorneys, examiners, visitors and others may be entitled to reasonable compensation for services as determined by the Court.

## ***How does the death of the protected person affect the Guardianship or Conservatorship?***

The Guardian or Conservator will be discharged. The Personal Representative of the estate will then take over the management of the financial affairs from the Conservator.

## ***What if I die or can no longer be the Guardian or Conservator?***

A Special Conservator or Guardian may be appointed by the Court in such emergency situations. You may not "Quit" as Guardian or Conservator, but you may have someone else petition the Court to be appointed Successor Guardian or Conservator of the protected person.

## ***When are Protective Proceedings NOT necessary?***

If a Health Care Power of Attorney exists, a guardianship may be avoided.

If a patient is able to consent to care under the Adult Health Care Consent Act, a guardianship may not be necessary.

A conservatorship may not be necessary if the adult's only cash asset is a monthly Social Security check. Or, if the adult's only asset, other than monthly Social Security checks, is real property and no changes are proposed for the property at this time.

If a Durable Power of Attorney exists, a conservatorship may be avoided.

### ***General Information to Remember***

All records of the Probate Court are public.

The Probate Court cannot give legal advice.

The Greenwood County Probate Court only handles guardianships and conservatorships for persons who reside in Greenwood County, or in the case of a conservatorship, own property in Greenwood County.

Probate Laws are designed to protect the personal and financial interests of the incapacitated adults or minors. The goal is to create the least restrictive environment that best meets the needs of the people involved.